

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
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IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates To:

James Steele v. 3M Company, et al; Case No.
17-cv-01262

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, James Steele, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 23 [Dkt. 1354], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectfully show the Court the following:

1. The Court issued Pre-Trial Order #23 on January 8, 2018.
2. Plaintiff's counsel's office attempted to contact all clients after issuance of this order.
3. James Steele died on January 23, 2018.
4. Attempts to reach Mr. Steele by phone occurred January 23, 2018 (the date of his death), February 2, 2018 and March 23, 2018. A message was left on January 23, 2018 and February 2, 2018 but there was a busy signal on March 23, 2018.
5. Plaintiff wrote Mr. Steele a "contact us" letter on April 4, 2018, stating the counsel had been trying to reach him for "several weeks".
6. Another follow up phone call was made on April 13, 2018 with no success.
7. At some point between April 13, 2018 and April 27, 2018, Plaintiff's counsel was contacted by the Steele family and learned of Mr. Steele's death.
8. On April 27, 2018, Plaintiff's counsel wrote to Mr. Steele's son and daughter regarding the urgency of producing Mr. Steele's death certificate and any estate documents.
9. Mr. Steele's death certificate was received on May 8, 2018.
10. A suggestion of death was filed on May 9, 2018.
11. Unlike a Motion to Substitute that requires a 90- day deadline to substitute a party

subsequent to filing a suggestion of death, there is no rule of law requiring that a suggestion of death be filed within 90 days.

12. Although Pre-trial order #23 allows Defendants to move to dismiss Plaintiff's case with prejudice after 90 days of death if no Suggestion of Death is filed, there is no automatic right of dismissal and as a matter of judicial discretion, some consideration should be made where the Plaintiff's family and counsel have attempted in good faith to follow the order.
13. The foregoing facts show that Plaintiff's counsel as well as the Steele family made good efforts to comply with Pre-Trial Order number 23 but simply could not meet the 90 day goal set by said order and were *16 days* short of said goal.
14. Plaintiff's counsel prays that the Court find that paragraphs 1-10 above show good cause and good-faith in attempting to follow the guidelines of Pre-Trial order number 23 and deny Defendants Motion to Dismiss with Prejudice.

Respectfully submitted,

Dated: July 13, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2018 a copy of the above and foregoing *Plaintiff's Response to Defendants' Motion to Dismiss* has been served on all parties or their attorneys via Minnesota ECF filing system, which will send notice of electronic filing in accordance with the procedures established in MDL 15-2666.

/s/ Alfred A Olinde, Jr.